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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,699	09/25/2003	Francisco Parra	2229-17-1	6348

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EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,699

Applicant(s)

PARRA, FRANCISCO

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01 March 2004</u> . | 6) <input type="checkbox"/> Other: ____. |

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1) Claims 11-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The quote-form "Flow Pack" (claim 11, line 1) is unclear with respect to its meaning.

In claim 11, the limitation, "or similar packages, with longitudinal seams and transversal closures..." is indefinite since it is unclear what all structure, which is not "Flow Packs", would be considered to be similar packages.

Claim 11 is further indefinite as being dependent on a cancelled claim.

Claim 11 is confusing also since it is unclear whether the package and the detaching strip are positively recited as structure or as intended use in the claim. In fact, the entire claim appears to be a preamble and to be claimed with respect to intended use only. Therefore, the only element that appears to be as claimed structure is the term "device" in line 1; the remainder of the claim fails to refer to the device.

The parenthetical limitation in each of claims 12-14 and 16 makes the claimed subject matter indefinite. For example, in claim 12, the parenthetical term "(occluded printing)" is indefinite since it is unclear whether occluded printing is a required limitation of subject matter in the claim. Applicant is required to address this problem in each of claims 12-14 and 16.

In claim 12 there is no antecedent basis for "said internal face of said packaging film".

The limitation in claim 15, calling for the tear area to create an upper flap between itself and the nearest transversal closure, makes no sense.

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In claim 16, there is no antecedent basis for "said easy open/close element" nor for "the self-stick part".

2) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3) Claims 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yeager (5,461,845) in view of Underwood et al (3,187,982). In the reference of Yeager, there is provided a bag 10 which is capable of functioning as a "Flow Pack". The bag includes a easy open device defined by a detaching element at 48, a through cut at pull tab 52, and a exposed end at 50. The easy open device is provided transverse to the machine direction of the manufacture of the bags (see Fig. 4). The device is less than the width of the bag. The bag includes a transverse seam (24) and transversal closures (20,22).

Although the reference of Yeager does not disclose the detaching element as being a strip, the reference of Underwood et al at 58,60 (see Fig. 5) and description thereof suggests that the detaching element for a package, in which the element is located on the inside surface of the material of the package, may be in the form of a detaching strip for the purpose of providing easy openability. Accordingly, it would have been obvious in view of Underwood et al to have made the element 48 of Yeager as a strip to provide the package of Yeager with easy openability.

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In addition, the reference of Underwood et al at column 8, lines 40-42 suggests that tear tapes may be coated/printed with color or metallized substance, apparently for the purpose of making the tear tape more easily discernable - which is the predominate reason for coloring something. Accordingly, for this reason it would have further been obvious in view of Underwood et al to have coated/printed the detaching strip (above) with a color or metal.

In addition, the Underwood et al reference states that the surfaces (note the plural form of this word) are colored. This suggests that all surfaces, including the surface facing the interior face of the packaging material, may be colored. Accordingly, it would have been obvious in view of this to have made the package facing surface of the strip (above) printed.

Regarding claim 12, adhesives are well known equivalents for heat sealing (which is taught by Underwood et al), except that adhesives are known not to require heat for attachment. Accordingly, it would have further been obvious to have used adhesive instead of heat sealing for attaching the detaching strip (above) without the need for heat.

5) Claims 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yeager (5,461,845) in view of Krul (5,806,281). In the reference of Yeager, there is provided a bag 10 which is capable of functioning as a "Flow Pack". The bag includes a easy open device defined by a detaching element at 48, a through cut at pull tab 52, and a exposed end at 50. The easy open device is provided transverse to the machine direction of the manufacture of the bags (see Fig. 6). The device is less than the width of the bag. The bag includes a transverse seam (24) and transversal closures (20,22).

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Although the reference of Yeager does not disclose the detaching element 48 as being a strip, the reference of Krul, at the tear tape combination 15-20 and 22 and description thereof, suggests that a tear/detaching element may be made with a width, as a tear tape/detaching strip, for providing a dimension for receiving indicia/printing (20) on a surface of the body (16) of the element to be viewed through a transparent packaging material (14) (col. 2, lines 50-55), and the indicia side of the tape may be adhesively attached (at 19) to the interior face of the package material (14), for the purpose of combining the function of *providing information* with the function of providing a *means to tear the package open*. Accordingly, it would have been obvious in view of Krul to have made the detaching element as a strip, to have printed indicia on the strip and to have adhesively attached the indicia side of the strip to the inside of the package material of the bag 10, for the purpose of combining the function of *providing information* with the function of providing a *means to tear the package open*.

7) Claims 13, 15 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yeager (5,461,845) in view of Krul (5,806,281) as applied to claim 11 above, and further in view of Repko et al (3,184,149). The reference of Repko et al at 19,20,22 and Figures 4 and 5 suggests that the tear opening of a package may "define" an upper flap, wherein after opening the flap, a covering (22) for a self-stick adhesive (20) is removed from the adhesive and the flap is folded down over to cover and to adhesively close the open tear. Accordingly, it would have further been obvious in view of Repko et al to have made the package of Yeager (as modified above) with an

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upper foldable flap above the opening tear and with an adhesive fastener for fastening the flap closed in the manner of Repko et al.

In addition, the reference of Repko et al at 28,36 suggests providing the end of a detachment element (28) at the seam in a package and suggest providing incisions parallel to the detaching element. This facilitates the opening function by using the side of the seam of the package to start the opening tear. Accordingly, it would have further been obvious in view of Repko et al to have made the package of Yeager (a modified above) wherein the end of the strip is provided at the seam and is provided with parallel incisions, for the purpose of opening package from the edge.

8) Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Yeager (5,461,845) in view of Krul et al (5,806,281) as applied to claim 11 above, and further in view of Schunemann (2,120,629). The reference of Schunemann at 1,2,4,5 suggests that for a package portion which includes detachment strips (2) located interiorly of a packaging film (1) and which includes through-cuts/slots (4) in an area of the end of the strip, there may be provided an easy/open close element (5) which blocks the cuts (see Fig. 5) and which is attached to the film (1). This is used to easily spot where the tear should start. The through-cuts help start the tearing. In order to provide these functions to Yeager (as modified above), it would have further been obvious in view of Schunemann to have provided through-cuts in the packaging material of Yeager in the area of the end of the detaching strip and to have provided a blocking element over said cuts.

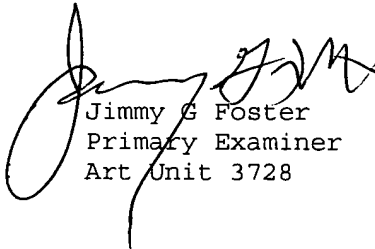
9) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number

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is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
26 April 2004